

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
CHARLES T. CRAWFORD	)	File No. A060756
Licensee of Conventional Business Station	)	
WPRL470, Santa Inez, California	)	
	)	
DENNIS ENYEART	)	File No. A059522
Licensee of Conventional Business Station	)	
WPRL897, Santa Inez, California	)	
	)	
RADIOWAVE COMMUNICATIONS	)	File No. A060866
Licensee of Conventional Business Station	)	
WPLV944, Santa Inez, California	)	
	)	
WILLIAM SORRENTINO	)	File No. A060755
Licensee of Conventional Business Station	)	
WPRL252, Santa Inez, California	)	
	)	
US MOBILE WIRELESS	)	File No. A060916
Licensee of Conventional Business Station	)	
WPRL260, Santa Inez, California	)	

**ORDER**

**Adopted: May 19, 2003**

**Released: May 21, 2003**

By the Chief, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau:

**I. INTRODUCTION**

1. In this *Order* we dismiss a Further Petition for Reconsideration (Further Petition) and deny an informal request for action (Informal Request) that James A. Kay, Jr. (Kay) filed on November 4, 2002.<sup>1</sup> The Further Petition seeks reconsideration of the Commission's denial<sup>2</sup> of Kay's Petition for Reconsideration (Petition)<sup>3</sup> of the Commission's earlier dismissal<sup>4</sup> of Kay's consolidated Application for Review (Application).<sup>5</sup> Kay's Application sought review of the dismissal, by the staff on April 4, 2001,<sup>6</sup>

<sup>1</sup> Kay Petition for Further Reconsideration (filed Nov. 4, 2002) (Further Petition). The Informal Request was filed as part of the Petition for Reconsideration that Kay filed on March 4, 2002, and the Commission dismissed it without prejudice. See note 3 and para. 3, *infra*. Herein, on our own motion, we consider the Informal Request as newly filed on November 4, 2002. See paras. 6-7, *infra*.

<sup>2</sup> Charles T. Crawford, et al., *Memorandum Opinion and Order*, 17 FCC Rcd 19328 (2002) (*Crawford MO&O*).

<sup>3</sup> Kay Petition for Reconsideration (filed Mar. 4, 2002) (Petition).

<sup>4</sup> Charles T. Crawford, et al., *Order*, 17 FCC Rcd 2014 (2002) (*Crawford Order*).

<sup>5</sup> Kay Application for Review (filed May 4, 2001) (Application).

of his late-filed request for reconsideration (Request) of the above-captioned grants, which Kay argued do not comply with the Commission's rules because they authorize co-channel operations at sites that are too close to Kay's Station WNJA910, Oat Mountain, California.<sup>7</sup> Arguably, the Application also sought review of the denial, by the staff on March 13, 2001, of Kay's separately filed petition for reconsideration of the above-captioned grant to Enyeart.<sup>8</sup>

## II. BACKGROUND

2. *Crawford Order*. In the *Crawford Order*, the Commission dismissed Kay's Application because it contained new information and advanced new arguments, *e.g.*, adequacy of notice of license grants, equitable estoppel, denial of due process, that the Wireless Telecommunications Bureau (Bureau) had no opportunity to consider and in contravention of Section 155(c)(5) of the Communications Act of 1934, as amended (Act) and as implemented by Section 1.115(c) of the Rules.<sup>9</sup> Nonetheless, the Commission also observed that "secondary operations" refer to operations that may not cause interference to operations authorized on a primary basis and are not protected from interference from those primary operations.<sup>10</sup> Additionally, the Commission noted the Division's holding, in the *Enyeart Order*, that secondary sites may be required to terminate operations should a co-channel licensee locate a primary site within seventy miles of the secondary site, and interference occurs as a result.<sup>11</sup>

3. *Crawford MO&O*. In his Petition of the *Crawford Order*, however, Kay argued that (1) the application for review was proper because the issue of timeliness was before the Bureau,<sup>12</sup> (2) that the Commission should have treated it as a petition for reconsideration,<sup>13</sup> and (3) that the dismissal was erroneous.<sup>14</sup> Therefore, Kay reiterated assertions that he raised in his application for review.<sup>15</sup> In his Petition, Kay requested, pursuant to Section 316 of the Act and Section 1.41 of the Rules,<sup>16</sup> that the Commission modify the captioned authorizations. In this connection, Kay argued that license modification was warranted because the subject license grants did not comply with the Commission's co-

---

(...continued from previous page)

<sup>6</sup> See Letter from Mary Shultz, Chief, Licensing and Technical Analysis Branch (Branch), Public Safety and Private Wireless Division (Division), Bureau to Robert J. Keller, Esq. (dated Apr. 4, 2001) (Branch Letter).

<sup>7</sup> Kay Request for Dismissal or Denial of Applications (filed Dec. 14, 2000) (Request).

<sup>8</sup> See Dennis Enyeart, *Order on Reconsideration*, 16 FCC Rcd 5441 (WTB PSPWD 2001) (*Enyeart Order*). Although it denied the petition, the Division noted that Enyeart's secondary site must not cause and must accept interference from Kay's primary Oat Mountain site. See *e.g.*, Branch Letter at 1 citing *Enyeart Order, id.*

<sup>9</sup> 47 U.S.C. § 155(c)(5); 47 C.F.R. § 1.115(c).

<sup>10</sup> See *Crawford Order*, 17 FCC Rcd at 2015 n.7 citing 47 C.F.R. § 90.7.

<sup>11</sup> See *Crawford Order*, 17 FCC Rcd at 2016 ¶ 7 citing *Enyeart Order*, 16 FCC Rcd 5442 ¶¶ 4.

<sup>12</sup> Petition at 2.

<sup>13</sup> *Id.* at 2.

<sup>14</sup> *Id.* at 2-3.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.* at 3 citing 47 U.S.C. § 316; 47 C.F.R. § 1.41.

channel separation rules.<sup>17</sup> The Commission denied Kay's Petition, treated Kay's license modification request as an informal request for action and dismissed it without prejudice.<sup>18</sup>

4. *Further Petition.* Here, Kay reasserts all previous arguments by incorporating by reference all his pleadings in this proceeding and requests a ruling on the merits.<sup>19</sup> Kay repeats arguments concerning the propriety of his application for review,<sup>20</sup> that the public interest warranted consideration of Kay's pleading,<sup>21</sup> and that the Commission should have referred his pleading to the Bureau.<sup>22</sup> Finally, Kay argues that dismissal of his informal request was erroneous.<sup>23</sup>

### III. DISCUSSION

5. *Further Petition.* Insofar as Kay's Further Petition repeats arguments previously made in his Petition, we find that this aspect of Kay's Further Petition is repetitious within the meaning of Section 1.106(b)(3) of the Commission's Rules, which states in pertinent part, "a petition for reconsideration of an order denying an application for review which fails to rely on new facts or changed circumstances may be dismissed by the staff as repetitious."<sup>24</sup> We thus dismiss Kay's Further Petition as repetitious with respect to arguments previously raised.

6. *Informal Request.* As an initial matter, we note that the Commission dismissed Kay's Informal Request without prejudice,<sup>25</sup> which means Kay is free to file a new request. In this connection, we are addressing Kay's Informal Request herein, on our own motion, as a matter of administrative efficiency.<sup>26</sup> For this purpose, we are considering the Informal Request as filed on November 4, 2002, *i.e.*, the date that Kay filed the *Further Petition*.

7. As noted above, Kay argues that the license grants do not comply with the Commission's co-channel separation requirements and therefore should be modified. However, the Commission suggested in the *Crawford Order* that the subject license grants comply with the Commission's co-channel separation rules and policies governing 800 MHz frequencies.<sup>27</sup> The Commission stated that with the exception of the Radiowave and Enyeart secondary sites, all stations licensed under the above-

---

<sup>17</sup> Petition at 3.

<sup>18</sup> See *Crawford MO&O*, 17 FCC Rcd 19330 ¶ 6. The Commission's Rules for the Wireless Services do not provide for petitions to modify or revoke a license, although such requests may be considered informally under 47 C.F.R. § 1.41.

<sup>19</sup> Further Petition at 2 citing Request, Application for Review, and Petition.

<sup>20</sup> Further Petition at 2-3.

<sup>21</sup> *Id.* at 3-4.

<sup>22</sup> *Id.* at 3.

<sup>23</sup> *Id.* at 4-5.

<sup>24</sup> 47 C.F.R. § 1.106(b)(3).

<sup>25</sup> The Commission noted that the Informal Request, which Kay never filed with the Bureau, reiterated his formal pleadings, which were dismissed for, among other things, raising arguments that the Bureau had no opportunity to address. See *Crawford MO&O*, 17 FCC Rcd at 19330 ¶ 6 *citing e.g.*, JPJ Electronic Communications, Inc., *Memorandum Opinion and Order*, 17 FCC Rcd 5512, 5516 ¶ 9 (2002) (*JPJ MO&O*) (wherein the Commission observed that it is not required to entertain informal requests). See *JPJ MO&O*, *id.* n.37 *citing e.g.*, Automobile Club of Southern California, *Order on Reconsideration*, 16 FCC Rcd 2934, 2936 ¶ 6 (WTB/PSPWD 2001) and Colorado RSA 7B(2) Limited Partnership, *Order*, 13 FCC Rcd 22079, 22081, n.17 (WTB/CWD 1998).

<sup>26</sup> See *e.g.*, Goosetown Enterprises, Inc., *Memorandum Opinion and Order*, 16 FCC Rcd 12792, 12795 ¶ 7 (2001).

<sup>27</sup> 47 C.F.R. § 90.621 (co-channel separation requirements).

captioned call signs were located more than seventy (70) miles from Kay's primary Oat Mountain site.<sup>28</sup> Further, the Commission's policies provide that secondary sites may be forced to terminate operations should a co-channel licensee within seventy miles of the secondary site experience interference.<sup>29</sup> The Radiowave and Enyeart secondary sites were granted on the condition that they not cause interference to primary operations and must accept interference from such operations.<sup>30</sup> In this connection, the Commission reiterated that Radiowave and Enyeart's secondary sites may not cause interference to primary operations.<sup>31</sup> The *Crawford Order* effectively provided Kay the relief proposed in his application for review: that the Commission reiterate that Radiowave and Enyeart's secondary operations may not cause interference to Kay's primary operations. Further, the Commission noted that Enyeart terminated its previously licensed secondary operations.<sup>32</sup> The record in this proceeding reflects that Kay has yet to claim actual interference or provide any objective evidence of interference. One could reasonably assume that if Kay had experienced interference from Radiowave's secondary site, or any other site for that matter, he would have presented such evidence by now. In this connection, we distinguish the instant matter from the decision in *Rayfield* where we initiated license modification proceedings because the record reflected evidence of interference.<sup>33</sup> Under these circumstances, initiating proceedings against the subject licenses would not prevent harmful interference (because no evidence of interference has been shown), would unduly disrupt the operations authorized by the captioned licenses and, therefore, would not serve the public interest. Thus, we believe that denial of Kay's Informal Request is warranted under the Commission's existing rules and consistent with the public interest.

#### IV. ORDERING CLAUSES

8. Accordingly, IT IS ORDERED that pursuant to Sections 4(i) and 405(a) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and 405(a), and Sections 1.106 and 1.41 of the Commission's Rules, 47 C.F.R. §§ 1.106, 1.41, the Further Petition for Reconsideration filed by James A. Kay, Jr., on November 4, 2002, IS DISMISSED.

9. IT IS FURTHER ORDERED that pursuant to Sections 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), and Section 1.41 of the Commission's Rules, 47 C.F.R. § 1.41, the Informal Request for Commission action filed by James A. Kay, Jr., IS DENIED.

10. This action is taken under delegated authority pursuant to Sections 0.131, 0.331, and 1.106(b)(3) of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331, 1.106(b)(3).

FEDERAL COMMUNICATIONS COMMISSION

D'wana R. Terry  
Chief, Public Safety and Private Wireless Division  
Wireless Telecommunications Bureau

<sup>28</sup> See *Crawford Order*, 17 FCC Rcd at 2015 ¶ 3.

<sup>29</sup> See e.g., Roger Dickinson d/b/a Portable Walkie Talkies to Go, *Memorandum Opinion and Order*, 15 FCC Rcd 4845, 4850 ¶ 15 (2000).

<sup>30</sup> 47 C.F.R. § 90.7.

<sup>31</sup> See note 11, *supra* and accompanying text.

<sup>32</sup> See *Crawford Order*, 17 FCC Rcd at 2019 n.12.

<sup>33</sup> Rayfield Communications, Inc., *Memorandum Opinion and Order*, 16 FCC Rcd 19513 (PSPWD 2001).